

STATE OF WISCONSIN

Department of Commerce

In the Matter of the PECFA Appeal of

Kathleen Rick
Karr Mill of Wisconsin
N I 1954 Honey Road
Tripoli WI 54564

PECFA Claim #53012-1968-35
Hearing 996-152

Final Decision

P R E L I M I N A R Y R E C I T A L S

Pursuant to a petition for hearing filed October 6, 1995, under §101.02(6)(e), Wis. Stats., and §ILHR 47.53, Wis. Adm. Code, to review a decision by the Department of Industry, Labor and Human Relations, now Department of Commerce, a hearing was commenced on June 10, 1997, at Madison, Wisconsin. A proposed decision was issued on July 1, 1997, and the parties were provided a period of twenty (20) days to file objections.

The issue for determination is:

Whether the department was correct in offsetting recovery of a prior overpayment of \$26,337.59 against the Petroleum Environmental Cleanup Fund Act (PECFA) payment made on September 16, 1995.

There appeared in this matter the following persons:

PARTIES IN INTEREST:

Kathleen Rick
Karr Mill of Wisconsin
N I 1954 Honey Road
Tripoli WI 54564

By: In Person

Department of Commerce
PECFA Bureau
201 W. Washington Avenue
PO Box 7838
Madison WI 53707-7838

By: Kristiane Randal
Department of Commerce
201 W. Washington Ave., Rm. 623
PO Box 7970
Madison WI 53707-7970

The authority to issue a final decision in this matter has been delegated to the undersigned by order of the Secretary dated February 6, 1997.

The matter now being ready for decision, I hereby issue the following

FINDINGS OF FACT

The Findings of Fact in the Proposed Decision dated July 1, 1997 are hereby adopted for purposes of this final decision.

CONCLUSIONS OF LAW

The Conclusions of Law in the Proposed Decision dated July 1, 1997 are hereby adopted for purposes of this final decision.

FINAL DECISION

The Proposed Decision dated July 1, 1997, is hereby adopted as the final decision of the department.

NOTICE TO PARTIES

Request for Rehearing

This is a final agency decision under §227.48, Stats. If you believe this decision is based on a mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision and which you could not have discovered sooner through due diligence. To ask for a new hearing, send a written request to Department of Commerce, Office of Legal Counsel, 201 W. Washington Avenue, 6th Floor, PO Box 7970, Madison, WI 53707-7970.

Send a copy of your request for a new hearing to all the other parties named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the hearing examiner made and why it is important. Or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain how your request for a new hearing is based on either a mistake of fact or law or the discovery of new evidence which could not have been discovered through due diligence on your part, your request will have to be denied.

Your request for a new hearing must be received no later than 20 days after the mailing date of this decision as indicated below. Late requests cannot be granted. The process for asking for a new hearing is in Sec. 227.49 of the state statutes.

Petition For Judicial Review

Petitions for judicial review must be filed no more than 30 days after the mailing date of this hearing decision as indicated below (or 30 days after a denial of rehearing, if you ask for one). The petition for judicial review must be served on the Secretary, Department of Commerce, Office of the Secretary, 201 W. Washington Avenue, 6' Floor, PO Box 7970, Madison, WI 53707-7970.

The petition for judicial review must also be served on the other "PARTIES IN INTEREST" and counsel named in this decision. The process for judicial review is described in Sec. 227.53 of the statutes.

Dated: June 11, 1998

Christopher C. Mohrman
Executive Assistant
Department of Commerce
PO Box 7970
Madison WI 53707-7970

cc: Kathleen Rick
Kristiane Randal
Dispute Resolution Coordinator, PECFA

Date Mailed: June 24, 1998

Mailed By: Diane Castillon

STATE OF WISCONSIN

DEPARTMENT OF COMMERCE

IN THE MATTER OF: The claim for
reimbursement under the PECFA
Program by

MADISON HEARING OFFICE
1801 Aberg Ave., Suite A
P.O. Box 7975
Madison, WI 53707-7975
Telephone: (608) 242-4818
Fax: (608) 242-4813

Kathleen Rick

Hearing Number: 96-152
Re: PECFA Claim # 53012-1968-35

PROPOSED HEARING OFFICER DECISION

NOTICE OF RIGHTS

Attached are the Proposed Findings of Fact, Conclusions of Law, and Order in the above-stated matter. Any party aggrieved by the proposed decision must file written objections to the findings of fact, conclusions of law and order within twenty (20) days from the date this proposed decision is mailed. It is requested that you briefly state the reasons and authorities for each objection together with any argument you would like to make. Send your objections and argument to: Madison Hearing Office, P.O. Box 7975, Madison, WI 53707-7975. After the objection period, the hearing record will be provided to Christopher Mohrman, Deputy Secretary of the Department of Commerce, who is the individual designated to make the FINAL Decision of the department in this matter.

STATE HEARING OFFICER:
Karen L. Godshall

DATED AND MAILED:
July 1, 1997

MAILED TO:

Appellant Agent or Attorney

Kathleen Rick
Karr Mill of Wisconsin
N11954 Honey Road
Tripoli, WI 54564-9039

Department of Commerce

Kristiane Randal
Assistant Legal Counsel
P.O. Box 7969
Madison, WI 53707-7969

STATE OF WISCONSIN

DEPARTMENT OF WORKFORCE DEVELOPMENT

In the matter of:

Claim for Reimbursement Pursuant
to the Provisions of the PECFA Program

Hearing No. 96-152
Re: PECFA Case # 53012-1968-35
Kathleen Rick
Karr Mill of Wisconsin

In September of 1995, a decision was issued by the Department of Industry, Labor and Human Relations, providing payment to Karr Mill of Wisconsin, Inc., under the PECFA program. The award made by that decision was reduced by the amount of \$26,337.59, to recover an overpayment allegedly made on a prior claim award. The appellant, by its president Kathleen Rick, later appealed from that portion of the decision related to the overpayment recovery, as mentioned above. A prehearing conference was held on that appeal, and a hearing was held on June 10, 1997, at Madison, on the appeal. The appellant appeared at that hearing by Kathleen Rick, its president. The Department of Commerce, which had by then assumed responsibility for the PECFA program, appeared by its assistant legal counsel, Kristiane Randal.

The issue on which testimony was taken at the June 10 hearing was whether the department was correct in offsetting recovery of a prior overpayment against the PECFA claim payment made on September 16, 1995.

William McCoshen, Secretary of the Department of Commerce, delegated to an administrative law judge of the Department of Workforce Development the authority to issue a proposed decision in this matter. Christopher C. Mohrman, Executive Assistant, has authority for any final decision.

Pursuant to the above authority, the administrative law judge makes the following

PROPOSED FINDINGS OF FACT

1. The appellant owned a property in the early 1990's which included the former site of a gasoline station.
2. It was determined that there had been contamination at that site from leaking underground storage tanks or associated lines.
3. The appellant made a claim to the PECFA program for reimbursement of costs for a cleanup on which contract work was begun prior to January 1, 1993, and payment was made on that claim.
4. After payment was made on the appellant's first claim, staff in the PECFA program came to question the reasonableness of the costs charged by a contractor involved in the cleanup at the appellant's site.
5. In response to the PECFA staff concerns, a meeting was held, attended by the contractor and by the appellant's president, at which the possible overcharge was discussed.
6. Pursuant to the above meeting, the appellant's president communicated with the PECFA staff, first by telephone communication and later in writing, agreeing that the appellant would not contest recovery of \$26,337.59 from the earlier claim.

7. The appellant also submitted later claims for reimbursement under the PECFA program, including one which was addressed by an award letter of September 26, 1995. The payment made as the result of that award letter was reduced by \$26,337.59 from the amount otherwise payable, with the reduction attributed to "right to, recovery action".

8. The appellant filed an appeal to the above payment reduction, seeking to "reopen" the recovery action, and the instant proceedings were initiated. .

PROPOSED CONCLUSIONS OF LAW

1. The PECFA program has a right to recover from a claimant under the PECFA program those funds which have been improperly paid or paid for costs which were not eligible.

2. The PECFA program may recover such improperly paid funds by offsetting the improperly paid amount against later PECFA claims made by the same party.

3. The earlier proceedings between the PECFA program and the appellant established that there had been an improper or excessive payment, amounting to \$26,337.59.

4. The appellant's communications with the department demonstrated acceptance of the decision with regard to the overpayment and with regard to the program's right of recovery.

5. The appellant has offered no new or compelling evidence which would warrant reopening of the prior action, nor has it demonstrated that its prior agreement to the recovery was procured by fraud or other improper means.

6 The appellant has not alleged that it is not the same entity to whom the improper or excessive payment was made, nor has it alleged that repayment of the overpayment has already been made by some other means.

7. The appellant is estopped at this time from reopening the earlier recovery action, pursuant to both the provisions of the PECFA statutes (section 101.143) and equitable theories.

8. The department acted correctly in offsetting recovery of the prior overpayment in the amount of \$26,337.58 against the PECFA claim payment made on September 26, 1995.

PROPOSED DECISION

The department's action in offsetting recovery of a prior overpayment against the PECFA claim payment of September 26, 1995, is upheld.

Dated this 1st day of July, 1997

Karen L. Godshall
Administrative Law Judge
Madison Hearings Office
1801 Aberg Ave., Suite A
P.O. Box 7975
Madison, WI 53707-7975